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FISCAL IMPACT STATEMENT

LS 6702

BILL NUMBER: SB 305

NOTE PREPARED: Jan 29, 2008

BILL AMENDED: Jan 24, 2008

SUBJECT: Controlled Substances.

FIRST AUTHOR: Sen. Steele

FIRST SPONSOR: Rep. Tyler

BILL STATUS: As Passed Senate

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill adds certain controlled substances to the list of Schedule I, Schedule II, Schedule III, Schedule IV, and Schedule V controlled substances. The bill also corrects the spelling of certain other controlled substances.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Summary-* Costs for the incarceration of offenders convicted of controlled substance offenses could increase if more people are incarcerated as a result of adding to the lists of Schedules I, II, III, IV, V controlled substances. Also, costs of incarceration could increase because racketeering influence and corrupt organization statutes apply to dealing controlled substance offenses, and, depending on the circumstances of a controlled substance offense, portions of a sentence may not be suspended. Felony murder changes apply when a person kills another person while dealing a Schedule I, II, III, IV or V controlled substance. Although not expected to have a fiscal impact on state agencies, adding to the controlled substance schedules may increase the number of driving license suspensions and professional license revocations (depending on the actions of the court and the professional licensing boards or state agencies involved).

Juvenile courts do not have jurisdiction over cases involving dealing in Schedule I, II, or III controlled substances and, in certain circumstances, may not have jurisdiction over cases involving dealing in a Schedule IV controlled substance. Physician assistants may not prescribe Schedule I or II medications or Schedule III, IV, or V medications containing oxycodone. On the other hand, revenues may increase because illegal controlled substances are subject to excise taxes, criminal offense penalties may include fines, and vehicles or other property involved in controlled substance offenses may be forfeited.

Criminal Offenses: Offenses involving Schedule I, II, III, IV, and V controlled substances include:

- Dealing in a controlled substance (IC 35-48-4-1 and 2)
- Dealing in a Schedule IV controlled substance (IC 35-48-4-3)
- Dealing in a Schedule V controlled substance (IC 35-48-4-4)
- Possession of controlled substances (IC 35-48-4-6 and 7)
- Operating a vehicle with a Schedule I or II controlled substance (IC 9-30-5-1, 3, 4, and 5)
- Corrupt business influence (IC 35-45-6-1)
- Distributing or dispensing a controlled substance (IC 35-48-4-14)
- Murder (IC 35-42-1-1)

The penalties for these crimes range from felony murder to a Class C misdemeanor, and, depending on the circumstances of the crime, many of these offenses include enhanced penalties. The following penalties apply to these offenses.

Crime Class Category	Sentence Range	Average Length of Stay in a DOC Facility
Felony Murder	45 to 65 years, Death Penalty, or Life Imprisonment without Parole	19, 16, or 47.5 years*
Class A Felony	20 to 50 years	9 years
Class B Felony	6 to 20 years	3.7 years
Class C Felony	2 to 8 years	2 years
Class D Felony	6 months to 3 years or Reduction to Class A misdemeanor	10 months
Class C Misdemeanor	Up to 60 days in local jail	N/A
*The average length of stay for a determinate-term penalty is based on 2007 releases to parole and for the death penalty is based on 15 offenders sentenced to death who appealed execution and were executed. For life imprisonment without parole, the average length of stay is estimated.		

The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Murder Cases: The state reimburses 50% of qualified expenses incurred in counties holding death penalty cases. In murder cases where the most serious penalty is either life without parole or a term of years in prison, the state Public Defense Fund reimburses 40% of the qualified expenses of the trial. For murder cases in which the death penalty is being requested, attorney costs are estimated at \$107,804. For murder cases where life without parole is being requested, attorney costs are estimated at \$27,370. A term of years in prison would be even less expensive, but the exact attorney costs are not known.

Vehicle or Property Seizure: To the extent that the court would notify the Bureau of Motor Vehicles (BMV)

and the BMV produces a clear title, costs for the BMV could increase minimally.

(Revised) Background: Some Drug Enforcement Administration control numbers are updated in the bill, which better specifies the controlled substance. The following additions are made to the controlled substance schedules.

To Schedule I:	Acetyl-alpha-methylfentanyl (9815) Alpha-methylthiofentanyl (9832) Beta-hydroxy-3-methylfentanyl (9831) Beta-hydroxyfentanyl (9830) 3-Methylthiofentanyl (9833) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (9818) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl) (9834) Para-fluorofentanyl (9812) Thiofentanyl (9835) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (7473) 4-Bromo-2, 5-dimethoxyphenethylamine (7392) 2, 5-Dimethoxy-4-ethylamphet-amine (7399) 2, 5-Dimethoxy-4-(n)-propylthiophenethylamine (7348) 5-Methoxy-N, N-diisopropyltryptamine (7439) 3,4-methylenedioxy-N-ethylamphetamine (7404) Alpha-ethyltryptamine (7249) Alpha-methyltryptamine (7432) Diethyltryptamine (7434) Dimethyltryptamine (7435) N-hydroxy-3,4-methylenedioxyamphetamine (7402) ([+/-]) cis-4-methylaminorex (1590) Aminorex (1585). Cathinone (1235) N-Benzylpiperazine (7493) N, N-Dimethylamphetamine (1480)
To Schedule II:	dihydroetorphine (9334) Carfentanil (9743) Levo-alphaacetylmethadol (9648) Remifentanil (9739) Glutethimide (2550) Nabilone (7379)
To Schedule III:	Embutramide (2020) Buprenorphine (9064) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product (7369)

To Schedule IV:	Dichloralphenazone (2467) Zaleplon (2781) Zopiclone (2784) Cathine ((+)-norpseudoephedrine) (1230) Fencamfamin (1760) Fenproporex (1575) Mefenorex (1580) Modafinil (1680) Sibutramine (1675) Butorphanol (including its optical isomers) (9720)
To Schedule V:	Pregabalin (2782) Pyrovalerone (1485)

Explanation of State Revenues: *Criminal Offenses:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for all felony offenses is \$10,000, and for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Excise Taxes: Schedule I, II, and III controlled substances delivered, possessed, or manufactured in violation of state or federal law are subject to a \$40 per gram or other unit excise tax. Illegal Schedule IV controlled substances are subject to a \$20 per gram or other unit excise tax, and for illegal Schedule V controlled substances the excise tax is \$10 per gram or other unit. Between 2003 and 2007, the average annual revenue from all controlled substance excise taxes was \$198,000.

Vehicle or Property Seizure: The proceeds from the sale of a seized vehicle are distributed first to the county sheriff to cover sale costs; then to any person holding a valid lien or having an interest in the property; and then to the Common School Fund as ordered by the court.

Explanation of Local Expenditures: *Criminal Offenses:* If more defendants are detained in county jails prior to their court hearings or incarcerated in a county jail for a misdemeanor offense, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Murder Cases: The total costs of a murder trial where the death penalty is sought is estimated at \$219,346 and for life without parole it is estimated to cost \$50,314. These estimates include attorney, jury, prosecutor, and law enforcement costs. The cost of trial for a penalty with a term of years in prison is not known.

Vehicle or Property Seizure: The prosecuting attorney brings an action to seize a vehicle and may retain an attorney who is not a deputy prosecuting attorney.

Explanation of Local Revenues: *Criminal Offenses:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Vehicle or Property Seizure: A county sheriff may retain proceeds from the sale of a seized vehicle to offset costs associated with its sale.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Department of Correction; Todd Smith, Indiana State Police, 317-232-8998; Doug Gosser, Indiana Sheriffs' Association, 317-356-3633.

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